



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,281	09/26/2003	Thomas L. Sevier	20232-15	8754

7590 06/29/2004

Woodard, Emhardt, Moriarty, McNett & Henry LLP  
Bank One Center/Tower  
Suite 3700  
111 Monument Circle  
Indianapolis, IN 46204-5137

EXAMINER

THANH, QUANG D

ART UNIT PAPER NUMBER

3764

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/677,281	Applicant(s) SEVIER ET AL.	
	Examiner Quang D. Thanh	Art Unit 3764	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 September 2003.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 27-33 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/22/2003</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 27-29 and 31-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Weeks (1,769,872).

3. Re claim 27, Weeks discloses a massage instrument, comprising: a body having a first upper surface 14, a second lower surface 10 disposed opposite from said upper surface, and opposing lateral 12 surfaces, said upper 14 and lower 10 surfaces converging at a first end 16 to define a blunt tissue-engaging edge and diverging at an opposing second end 18 to define a comparatively larger second end defined by a surface extending between said upper and lower surfaces (figs. 1-3), said opposing lateral 12 surfaces extending vertically between said upper and lower surfaces and longitudinally between said first and second ends of said instrument body (best seen in fig. 3).

4. Re claim 28, wherein said upper surface 14 is defined by a continuously curved surface extending at least partially along the length of said instrument body between said first and second ends thereof (fig. 1 and 3).

Art Unit: 3764

5. Re claim 29, wherein said lower surface 10 is defined by a continuously curved surface extending at least partially along the length of said instrument body between said first and second ends thereof (figs. 1 and 3).

6. Re claim 31, Weeks discloses a massage instrument, comprising a rigid unitary body having an upper surface 14, a lower surface 10 as described above, said upper surface 14 being defined by a gradually convexly curved surface (fig. 3) extending at least partially and longitudinally along the length of said instrument body between said first and second ends thereof, said lower surface 14 being defined by a gradually concavely curved surface (groove 20 as shown in fig. 3) extending at least partially and longitudinally along the length of said instrument body between said first and second ends thereof.

7. Re claim 32, wherein the upper surface 14 is slightly crowned along a direction transverse to the length of said instrument body (best seen in fig. 3).

8. Re claim 33, wherein, in the use of said instrument, the blunt end of the first end of said instrument body engages the skin of the patient (p. 2, lines 5-12).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3764

10. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weeks in view of Hashimoto et al. (5,307,816). Although Weeks teaches that the device may be made of any other substances that would retain a smooth surface at all times (p. 1, lines 81-85), it is silent regarding the device being made of a resin ceramic composite material having resonant capabilities. However, Hashimoto teaches the application of therapeutic ultrasonic wave by the use of piezoelectric composite constituted of ceramic and resin materials. This composite would provide resonant capabilities (col. 10, lines 51-62). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the Weeks' device dependent upon the user's preference to suit the particular need or application as necessary, to use resin ceramic composite, as suggested by Hashimoto et al., for the purpose of providing a therapeutic instrument having resonant capabilities if desired.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (703) 605-4354. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703) 308-2698. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for regular and After-Final communications.

Art Unit: 3764

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Quang D. Thanh  
Patent Examiner  
Art Unit 3764  
June 24, 2004



NICHOLAS D. LUCCHESI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700